

RECEIVED

SEP 13 2000

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

FCC MAIL ROOM

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**REPLY COMMENTS OF THE MAINE PUBLIC UTILITIES COMMISSION**

The Maine Public Utilities Commission (MPUC) submits these comments in reply to comments filed in opposition to our Petition for Reconsideration.

**I. THE FCC SHOULD PROVIDE FOR FEDERAL AND STATE REVIEW OF ANY INDUSTRY GUIDELINES WHICH ARE GIVEN THE FORCE OF LAW**

In our Petition for Reconsideration, the MPUC asked the FCC to develop a joint state and federal process for reviewing any guidelines issued by the Industry Numbering Committee (INC) which are given the force of law, i.e. that must be followed by the carriers, the states, and the North American Numbering Plan Administrator (NANPA). A number of carriers oppose the MPUC's request, claiming that it is not procedurally proper, that the INC process is open to all to participate, and that the INC process has worked well in the past. The MPUC urges the FCC to reject these comments and address the underlying issue – the need to protect the *public's* interest in the administration of a *public* resource.

No. of Copies rec'd 014  
List A B C D E

**A. The MPUC's request is procedurally proper.**

The United States Telephone Association (USTA), Sprint, and AT&T each claim that the FCC should not consider the MPUC's request because it is not procedurally proper. They claim that the issue of federal review of industry guidelines was not included in this proceeding. They are wrong. One of the central issues in this proceeding was whether the FCC should codify rules and regulations relating to numbering administration. Indeed, the FCC specifically requested comment on "the suggested interplay between FCC rules and industry guidelines on numbering optimization." See Notice of Proposed Rulemaking at ¶ 35. Thus, any argument that the MPUC's request is procedurally improper must be dismissed.

**B. Arguments relating to the openness of the INC process overlook the underlying issue: the need for public review of decisions regarding public resources.**

Carriers make much of the openness of the INC process, urging the MPUC to obtain "competent representation" and participate in their forum. They argue that, "[f]undamental numbering decisions need to be *controlled* through a national process" and that "any attempt *to influence* industry-developed arguments" will frustrate their forum (emphasis added). These comments reflect the carriers' belief that they know best, that they own the numbering resources, and that they control numbering administration. The FCC should make clear, once and for all, that numbering resources are a *public* resource necessitating *public* administration through *public* review of any industry-drafted guidelines.

There is no question that the INC process is open to participation by state commissions – the MPUC acknowledged that fact in its Petition. Openness is not the issue. The issue is that by allowing INC guidelines the effect of law without public agency review, the FCC has given control over the administration of a public resource to the very entities that have been unable to manage that resource efficiently in the past. It is axiomatic that public policy decisions should be made by representatives of the public, not by private entities – no matter how well intentioned or competent the private entities might be.

While many of the guidelines propounded by the INC are technical in nature and require minimal review by regulatory agencies, others implement policy decisions made by the carriers regarding how numbers should be administered. These decisions need to be reviewed before they are given the effect of law. For example, earlier versions of the INC Central Office Code Assignment Guidelines allowed lengthy extensions of time for code activation without any penalty. These guidelines reflected a *policy* decision by the INC that warehousing of numbers was not a serious concern. The INC should not be in a position to make such a decision; it should be made by the public agencies that are responsible to the public. At a minimum, such a decision should be affirmatively reviewed and approved by public agencies before being given the effect of law.

**C. The INC's track record supports the MPUC's request for review of INC guidelines.**

USTA claims that the INC process has worked "successfully" for many years, while Sprint claims no knowledge of any INC failures. These

carriers fail to see the forest for the trees. If their claims were true, what need would there be for this proceeding? What need would there be for state commissions to spend thousands of hours trying to reconcile an apparent numbering "crisis" with the fact that there are millions of unused numbers in their area codes? What need would there be for the FCC to institute mandatory number utilization reporting and forecasting requirements? If the USTA and Sprint assertions were true, why have consumers paid billions of dollars associated with unnecessary new area codes? No one can seriously dispute the fact that the industry, including the INC, has failed at managing the numbering process, thereby wasting public resources and subjecting the public to inconvenience and unnecessary costs. The FCC should not leave the INC in a position to make public policy decisions regarding an important public resource.

The FCC should also reject the argument by Quest, WorldCom and Sprint that the INC is supervised or controlled by the North American Numbering Council (NANC). As those who have attended recent NANC meetings can attest, the INC has repeatedly reminded the NANC that INC is a separate body and that NANC does not control the INC.

Thus, the MPUC asks the FCC to grant its request for reconsideration of the decision to give the INC number administration guidelines the force of law. The MPUC requests that the FCC establish a system to review of any proposed changes to the guidelines before NANPA and the state utility commissions must enforce those changes.

## **II. RELIANCE UPON MONTHS TO EXHAUST WORKSHEETS LEADS TO INEFFICIENT ALLOCATION OF RESOURCES**

A number of carriers urge the FCC to deny state commission requests that the FCC impose utilization rates on pooling carriers and/or reconsider the decision to apply utilization rates to non-pooling carriers. All claim that months to exhaust worksheets (MTEs) provide sufficient proof of a carrier's need for additional resources. Their argument, however, is predicated upon a number of faulty assumptions. First, the carriers assume that all carrier employees will fill out the forms in conformance with the FCC's standards. Unfortunately, it has been the repeated experience of the MPUC that this assumption should not be made. Within the past month, a pooling CLEC submitted an application for resources in a rate center where it already had sufficient resources. Upon questioning by the MPUC, the CLEC employee who had submitted the application "checked" her records and found that, in fact, her company had more than enough resources in that rate center. Earlier this summer, another CLEC submitted a pooling forecast based upon a marketing forecast that the employee knew was inaccurate.

These are not isolated incidents; in the past two years inaccurate applications have far exceeded accurate applications. Carriers simply are not adequately training their personnel or stressing the importance of accurately filling out and submitting the MTEs. As a result, reliance upon MTEs inaccurately filled out by untrained carrier personnel will lead to continued inefficient administration of public numbering resources.

The second faulty assumption made by these carriers relates to the actual number of numbers they will need. For pooling wireline CLECs, the vast majority of their customers will be served with the customers' currently assigned ILEC phone numbers. Indeed, the whole point of local number portability (LNP) is to create a more competitive marketplace by allowing customers to retain their current phone numbers. Thus, claims by these carriers that meeting the utilization threshold will leave them short of numbers must be tempered by the knowledge that their need for numbers does not equal the number of customers or access lines they serve or will serve in the future. Instead, carrier numbering forecasts often reflect marketing forecasts of the number of expected customers rather than the number of new phone numbers that will be needed to serve that customer base. Requiring pooling carriers to meet a utilization threshold before obtaining growth blocks from the pooling administrator will not subject them to numbering shortages.

As the FCC has already found, wireless carriers should also be required to meet a utilization threshold before obtaining growth codes. For all the reasons described above, MTEs do not provide accurate evidence of carrier need. To accommodate wireless concerns regarding their busy seasons, the FCC should adopt the procedures already adopted in Maine and New York, which allow a carrier that does not meet the appropriate utilization threshold to provide the state with a MTE and supporting documentation showing a *bona fide* need for the resources. (The documentation might include a previous year's assignment

rate.) Such procedures would provide the necessary flexibility to meet seasonal fluctuations without relying solely on unsubstantiated MTEs.

The third faulty assumption made by the carriers is that NANPA will actually review the MTEs to ensure compliance with the FCC's standards. However, as the July 16, 2000 Letter Agreement Between the FCC and NANPA indicates, NANPA will not provide any substantive review of the MTEs. NANPA will simply be rubber-stamping carrier submissions; there will be no substantive review of the calculations and assumptions contained in carrier MTEs. Thus, carrier arguments that the FCC's six-month inventory rule will prevent carriers from warehousing numbers fail because the six-month inventory rule will not be enforced by NANPA.<sup>1</sup>

For all these reasons, we urge the FCC to grant our request to impose number utilization thresholds on all carriers, both pooling and non-pooling, and to find that MTEs alone do not provide sufficient evidence of carrier need for numbering resources.

### **III. THE FCC SHOULD GRANT THE REQUESTS OF MAINE AND CALIFORNIA TO ALLOW STATES TO CONTINUE THEIR STATE POOLING TRIALS UNTIL THE NATIONAL POOLING ROLLOUT**

Both the MPUC and the California Public Utilities Commission (CPUC) have requested that the FCC reconsider its requirement that state pooling trials conform to the national framework by September 1, 2000. Maine and California want to continue requiring pooling carriers to meet utilization thresholds before

---

<sup>1</sup>The Letter Agreement calls for an enforcement scheme that is no different from that in place today, a scheme that has led to the current crisis. The MPUC strongly urges the FCC to reconsider the terms of its Letter Agreement with NANPA and ensure that all of the standards adopted by the FCC in March are enforced.

obtaining growth codes and Maine wants to continue its sequential numbering requirements. A number of carriers objected to these requests, arguing that the FCC should not allow any deviation from the national framework. However, these carriers overlook the success of the Maine and California pooling trials and conservation efforts. They ignore the fact that in other areas of telephone regulation, such as consumer protection, every state has different requirements. They also ignore the fact that both the MPUC and the CPUC follow the INC pooling guidelines, thus providing a high degree of uniformity to their trials.

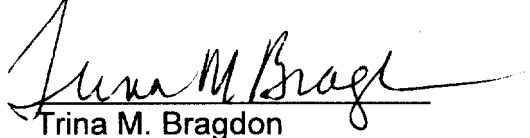
The FCC should allow the MPUC and CPUC to continue to impose utilization rates and any sequential numbering requirements on pooling carriers. These two requirements complement, but do not conflict with, the FCC's framework. Indeed, the FCC itself indicated that it will continue to consider application of utilization thresholds to pooling carriers and that its sequential numbering requirements are flexible. Order at ¶¶ 115, 244. The MPUC and CPUC have led state efforts in number conservation and our citizens have directly benefited by avoiding the inconvenience and expense associated with unnecessary area codes. The FCC should allow states to continue to serve their citizens through the imposition of number conservation efforts which require responsible and efficient number usage by all carriers.



#### IV. CONCLUSION

For the reasons described above, the MPUC respectfully requests that the FCC grant its Petition for Reconsideration and Clarification.

Respectfully submitted,

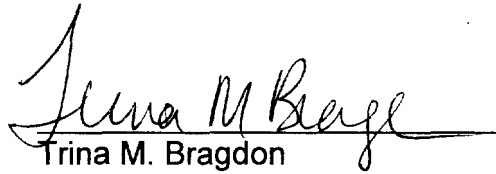


Trina M. Bragdon  
Staff Attorney  
Maine Public Utilities Commission

### **CERTIFICATE OF SERVICE**

I, Trina M. Bragdon, certify that on this day the Maine Public Utilities Commission's Reply comments were served via first-class mail to the persons on the attached service list.

Dated: September 6, 2000

  
Trina M. Bragdon